

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIKI GARNETT,

Plaintiff,

v.

CIVIL ACTION NO. 10-cv-5230

TAYLOR HOSPITAL, CROZER
KEYSTONE HEALTHCARE,
MAKSYMILIAN KAWALEC, M.D.,
MARINA CHERAYIL, M.D., SERENA
BAQAI, D.O., AMERICAN NATIONAL
RED CROSS d/b/a AMERICAN RED
CROSS PENN-JERSEY REGIONAL
BLOOD SERVICES,

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND OF DEFENDANT
AMERICAN NATIONAL RED CROSS d/b/a AMERICAN RED CROSS
PENN-JERSEY REGIONAL BLOOD SERVICES**

Defendant American National Red Cross d/b/a American Red Cross Penn-Jersey

Regional Blood Services (“Defendant”) hereby answers the Complaint as follows:

PROFESSIONAL MALPRACTICE/MEDICAL

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.

2. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.

3. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.

4. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.

7. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint.

8. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint.

9. Denied as stated. It is admitted only that Defendant is an entity organized and existing as a nonprofit, tax-exempt, charitable institution pursuant to 36 U.S.C. §§ 300101-300111 (2006). It is denied that the American National Red Cross, Penn-Jersey Region is an

independent entity to the extent that the Penn-Jersey Region is a chapter and local unit of the American National Red Cross, pursuant to 36 U.S.C. §§ 300101-300111 (2006).

10. The allegations contained in paragraph 10 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 10 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint to the extent that they are directed at other defendants.

11. The allegations contained in paragraph 11 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 11 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint to the extent that they are directed at other defendants.

FACTUAL BACKGROUND

12. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint.

14. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint.

15. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint.

16. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint.

17. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint.

18. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint.

20. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint.

22. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint.

23. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint.

24. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint.

25. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint.

26. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint.

27. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint.

28. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint.

29. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Complaint.

30. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint.

31. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Complaint.

32. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Complaint.

33. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Complaint.

34. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Complaint.

35. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint.

36. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint.

37. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint.

38. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Complaint.

39. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 of the Complaint.

40. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Complaint.

41. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint.

42. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint.

43. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint.

44. The allegations contained in paragraph 44 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 44 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint to the extent that they are directed at other defendants.

45. The allegations contained in paragraph 45 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 45 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Complaint to the extent that they are directed at other defendants.

WHEREFORE, Defendant respectfully requests judgment in its favor and against Plaintiff, plus such other and further relief as this Court may deem just and proper.

COUNT I – CORPORATE NEGLIGENCE

Tiki Garnett v. Taylor Hospital and Chester Keystone Health System

46. Defendant incorporates by reference paragraphs 1 through 45 inclusive, as if fully set forth at length herein.

47. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaint, including all of its subparts.

48. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Complaint.

49. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Complaint, including all of its subparts.

50. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint.

COUNT II – NEGLIGENCE

Tiki Garnett v. Marina Cherayil, M.D.

51. Defendant incorporates by reference paragraphs 1 through 50 inclusive, as if fully set forth at length herein.

52. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Complaint, including all of its subparts.

53. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Complaint.

COUNT III – NEGLIGENCE

Tiki Garnett v. Maksymilian Kawalec, M.D.

54. Defendant incorporates by reference paragraphs 1 through 53 inclusive, as if fully set forth at length herein.

55. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 of the Complaint, including all of its subparts.

56. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaint.

COUNT IV – NEGLIGENCE

Tiki Garnett v. Serena Baqai, D.O.

57. Defendant incorporates by reference paragraphs 1 through 56 inclusive, as if fully set forth at length herein.

58. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Complaint, including all of its subparts.

59. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 of the Complaint.

COUNT V – NEGLIGENCE

**Tiki Garnett v. American National Red Cross d/b/a American Red Cross
Penn-Jersey Regional Blood Services**

60. Defendant incorporates by reference paragraphs 1 through 59 inclusive, as if fully set forth at length herein.

61. The allegations contained in paragraph 61 of the Complaint, including all of its subparts, are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 61, including all of its subparts, are deemed factual, they are denied.

62. The allegations contained in paragraph 62 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 62 are deemed factual, they are denied.

WHEREFORE, Defendant respectfully requests judgment in its favor and against Plaintiff, plus such other and further relief as this Court may deem just and proper.

COUNT VI – NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

Tiki Garnett v. All Defendants

63. Defendant incorporates by reference paragraphs 1 through 62 inclusive, as if fully set forth at length herein.

64. The allegations contained in paragraph 64 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 64 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint to the extent that they are directed at other defendants.

65. The allegations contained in paragraph 65 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 65 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint to the extent that they are directed at other defendants.

WHEREFORE, Defendant respectfully requests judgment in its favor and against Plaintiff, plus such other and further relief as this Court may deem just and proper.

COUNT VII – LACK OF INFORMED CONSENT

Tiki Garnett v. Drs. Cherayil, Kawalec and Baqai

66. Defendant incorporates by reference paragraphs 1 through 65 inclusive, as if fully set forth at length herein.

67. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint, including all of its subparts.

68. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint.

PUNITIVE DAMAGES

Tiki Garnett v. All Defendants

69. Defendant incorporates by reference paragraphs 1 through 68 inclusive, as if fully set forth at length herein.

70. The allegations contained in paragraph 70 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 70 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 of the Complaint to the extent that they are directed at other defendants.

71. The allegations contained in paragraph 71 of the Complaint are conclusions of law, to which no responsive pleading is required. To the extent that the allegations of paragraph 71 directed at Defendant are deemed factual, they are denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint to the extent that they are directed at other defendants.

WHEREFORE, Defendant respectfully requests judgment in its favor and against Plaintiff, plus such other and further relief as this Court may deem just and proper.

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each claim in the Complaint, fails to state claims upon which relief may be granted and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's causes of action against Defendant are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's comparative fault or negligence exceeded 50% of the total alleged fault or negligence and thus her recovery, if any, is barred in its entirety.

FOURTH AFFIRMATIVE DEFENSE

No act or omission on the part of Defendant was the proximate, legal direct cause, or a substantial or contributing factor of the Plaintiff's alleged injuries and/or damages.

FIFTH AFFIRMATIVE DEFENSE

The damages alleged by Plaintiff may have been caused or proximately caused by some person or third party other than Defendant and for whom Defendant is not legally responsible.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages resulted from new and independent, unforeseeable, superseding and/or intervening causes unrelated to any conduct of Defendant.

SEVENTH AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiff were wholly, or in substantial part, caused by persons and/or agents over whom Defendant had no direction or control and/or substances or instruments not distributed or sold by Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrines of estoppel and/or waiver.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

In the event that Plaintiff has entered already, or enters in the future, into any settlement with, or executes any release of any present or future defendant or third-party defendant or any non-party, Plaintiff's claims against all other defendants are reduced by the greater of: (a) the amount of consideration received or to be received by Plaintiff in such settlement or for such release, or (b) the proportionate or pro-rata share of liability of the settling or released party or non-party.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant hereby gives notice that it intends to rely upon such other defenses as may become available or appear during the course of discovery proceedings in this case.

Defendant reserves the right to amend this Answer to assert such defenses.

WHEREFORE, Defendant respectfully requests judgment in its favor and against Plaintiff, plus such other and further relief as this Court may deem just and proper.

JURY DEMAND

Defendant hereby demands a trial by jury of all the facts and issues in this action pursuant to Federal Rule of Civil Procedure 38(b).

Dated: October 12, 2010

PEPPER HAMILTON LLP

By: s/Christopher W. Wasson
Christopher W. Wasson, Esquire (Atty. No. 63551)
Katherine M. Glaser, Esquire (Atty. No. 209130)
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Attorneys for Defendant, American National Red
Cross d/b/a American Red Cross Penn-Jersey
Regional Blood Services

CERTIFICATE OF SERVICE

The foregoing document was filed electronically on October 12, 2010 and is available for viewing and downloading via the Eastern District of Pennsylvania's Electronic Case Filing ("ECF") system. I, Katherine M. Glaser, hereby certify that on October 12, 2010, in addition to the Notice of Electronic Case Filing automatically generated by the ECF system, I caused a true and correct copy of the foregoing Answer, Affirmative Defenses, and Jury Demand of Defendant American National Red Cross d/b/a American Red Cross Penn-Jersey Regional Blood Services to be served upon counsel listed below via first class mail:

Joseph L. Messa, Jr., Esquire
Thomas N. Sweeney, Esquire
Messa & Associates, P.C.
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Philadelphia, PA 19103

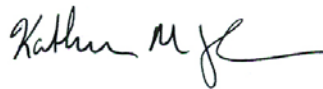
Taylor Hospital
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Crozer Keystone Healthcare
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Katherine M. Glaser